UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE AUTO DEALERS INSURANCE TRUST, Plaintiff/Cross-Claimant, v. AON CONSULTING, INC., Defendant/Third-Party Plaintiff, v. LUMENOS, INC., Third-Party Defendant.	Case No. C07-1182 MJP ORDER ON PARTIES' MOTIONS IN LIMINE

This matter comes before the Court on motions in limine brought by Lumenos, Inc. ("Lumenos") and Aon Consulting, Inc. ("Aon"). (Dkt. Nos. 83, 84, 86, 88 & 89.) All parties, including Plaintiff Washington State Auto Dealers Insurance Trust ("WSADIT"), have responded to the motions as required. After reviewing the briefing submitted and the balance of the record, the Court orders as follows:

I. Lumenos's Motions in Limine

1. Motion to Exclude Reference to Wellpoint (Dkt. No. 83)

This motion is DENIED. Lumenos has not shown that its affiliation with Wellpoint, Inc.

is prejudicial.

2. Motion to Exclude Bruce Carlson (Dkt. No. 84)

This motion is DEFERRED. The Court will preview Mr. Carlson's testimony before it is offered to the jury and will evaluate its admissibility under the Daubert standard.

3. ERISA Preemption (Dkt. No. 86)

This motion is DENIED. Lumenos errs in asserting that Tri-State Mach., Inc. v Nationwide Life Ins. Co., 33 F.3d 309 (1994) "controls the outcome of Lumenos' motion and dictates that the Court grant Lumenos' motion in limine." (Reply at 2.) This Court looks to the Ninth Circuit for guidance on ERISA preemption analysis. After the Supreme Court decision in New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (1995), the Ninth Circuit modified its preemption analysis and created a new framework for determining whether a state law claim is preempted by ERISA. See Rutledge v. Seyfarth, Shaw, Fairweather & Geraldson, 201 F.3d 1212, 1217-1219 (9th Cir. 2000) (collecting cases and summarizing history of preemption analysis in the Ninth Circuit).

The Ninth Circuit formulated the "relationship test"[1] in General Am. Life Ins. Co. v. Castonguay, 984 F.2d 1518, 1522 (9th Cir. 1993) and Arizona State Carpenters Pension Trust Fund v. Citibank, 125 F.3d 715, 722 (9th Cir. 1997). This test emphasizes:

> three traditional areas identified as preempted by the Supreme Court in Travelers: (1) "state laws that mandate ... employee benefit structures or their administration"; (2) "state laws that bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself"; and (3) "state laws providing alternate enforcement mechanisms for employees to obtain ERISA plan benefits." Arizona State Carpenters, 125 F.3d at 723 (quoting Coyne & Delany Co. v. Selman, 98 F.3d 1457 (4th Cir.1996)) (citations and internal quotation marks omitted). [The Ninth Circuit] concluded that "[1] where state law claims fall outside [these] three areas of concern identified in Travelers, [2]

[1]Later, the court "made clear that the multi-pronged test in Arizona State Carpenters was not the exclusive guide for the Circuit." Rutledge, 201 F.3d at 1218 (citing Operating Eng'rs Health & Welfare Trust Fund v. JWJ Contracting Co., 135 F.3d 671 (1998)). Because WSADIT brings only a common law contract claim, the factors test developed in Aloha Airlines and Operating Eng'rs is inapplicable.

> arise from state laws of general application, [3] do not depend upon ERISA, and [4] do not affect the relationships between the principal ERISA participants[,] the state law claims are not preempted." Id. at 724.

Rutledge, 201 F.3d at 1217. The court emphasized a similar "relationship" approach in Geweke Ford, reiterating that "[a] state law claim is preempted if it 'encroaches on the relationships regulated by ERISA.'" Geweke Ford v. St. Joseph's Omni Preferred Care, Inc., 130 F.3d 1355, 1358 (9th Cir. 1997) (quoting Castonguay, 984 F.2d at 1522). The court went on to state:

> ERISA does not preempt regulation of those relationships 'where a plan operates just like any other commercial entity [-] for instance the relationship between the plan and its own employees, or the plan and its insurers or creditors.' Under Castonguay, the key issue is whether the parties' relationships are ERISA-governed relationships.

Geweke Ford, 130 F.3d at 1358 (citation omitted).

The Ninth Circuit expanded the "relationship" test in Blue Cross of Cal. v. Anesthesia Care Assocs. Med. Group, Inc., 187 F.3d 1045 (9th Cir.1999), but:

> analyzed the issue from the perspective of ERISA's purposes, concluding that the purposes of ERISA preemption, as explained by Travelers, did not apply because "[t]he state law ... does not create an alternative enforcement mechanism for securing benefits under the terms of ERISA-covered plans" and "the economic effects that the ... claims might have on the plans does not imply that the claims interfere with the field of benefits law that Congress sought to occupy with ERISA."

Rutledge, 201 F.3d at 1219 (citations omitted).

In 2001, the Ninth Circuit observed that Supreme Court decisions issued after Travelers "have eschewed ... multi-factor tests in favor of a more holistic analysis guided by congressional intent." Dishman v. UNUM Life Ins. Co. of America, 269 F.3d 974, 981 (9th Cir. 2001) (citing Egelhoff v. Egelhoff, 532 U.S. 141 (2001)). Applying a holistic analysis, the Ninth Circuit determined that a state law tort did not relate to an ERISA plan because the tort remedy did not "interfere with nationally uniform plan administration" or provide an "alternative enforcement mechanism." Id.

Keeping the Dishman approach in mind, this Court applies the "relationship" test developed in Castonguay and Arizona State Carpenters and expanded by Geweke Ford, Blue

Cross of Cal.. Under this analysis, WSADIT's breach of contract claim against Lumenos is not preempted by ERISA. Lumenos is not an ERISA fiduciary and the parties' relationship is governed by their services contract, not by ERISA. See Geweke Ford, 130 F.3d at 1359. The contract claim against Lumenos does not fall within one of the three categories of preempted state law identified in Travelers. Further, the claim arises from a state law doctrine of general application (contract law), it does not depend on ERISA, and does not affect relations among principal ERISA entities. The contract remedy sought provides no alternative ERISA enforcement mechanism and does not interfere with the administration of an ERISA plan. See Dishman, 269 F.3d at 981. The claim is not preempted because any connection to a benefits plan is "tenuous, remote, or peripheral ... as is the case with many laws of general applicability." Travelers, 514 U.S. at 661. See also Tie Communications, Inc. v. First Health Strategies, Inc., No. Civ. A. 97-2597-EEO, 1998 WL 171126, at *3 (D. Kan. Mar. 3, 1998) (holding that a contract claim involving "failure to timely submit a benefits claim ... pursuant to the Administrative Services Agreement" was not preempted by ERISA, in part because "[i]nterpretation of [the plaintiff's] benefit plan is not involved, or is at most tenuously connected to the central dispute, which involves the Administrative Agreement ... and the Excess Insurance Agreement[.]")

Because WSADIT's contract claim is not preempted by ERISA, Lumenos's motion in limine is DENIED.

II. Aon's Motions in Limine (Dkt. No. 88)

1. Reference to Fiduciary Duties

The Court GRANTS this unopposed motion.

2. Reference to Negligent Actions

The only remaining claims at issue are for breach of contract. Because no tort claims remain, the legal negligence standard is not at issue and will not be presented to the jury. This

motion is DENIED – the Court will not disallow any party from using the word "negligent" in its common usage.

3. Lumenos's Rebuttal Witness

The Court GRANTS this unopposed motion.

4. Item No. 3 on AIG Disclosure List

This motion is DENIED. The parties contest whether the plain language of AIG's disclosure request encompassed information about R.A.P.'s claim. This is a question for the jury.

5. Renewal Clause

This motion is DENIED. The Court found the clause ambiguous as it relates to a limitation on damages and construed the ambiguous language against the drafter. (Dkt. No. 74 at 5.) Having ruled on the legal issue, nothing remains for a jury to decide.

6. Testimony Regarding Damages Limitation Clause

The Court GRANTS this unopposed motion.

The Clerk is directed to send a copy of this order to all counsel of record.

Dated: November 11, 2008.

Marsha J. Pechman

U.S. District Judge